Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of	)	
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Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services	)	WT Docket No. 98-20

To: The Commission

BELLSOUTH COMMENTS

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BELLSOUTH COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of its wireless affiliates and subsidiaries, hereby submits its comments regarding the Commission's proposed Universal Licensing System ("ULS"). *Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket 98-20, *Notice of Proposed Rulemaking,* FCC 98-25 (March 18, 1998), *summarized*, 63 Fed. Reg. 16938 (1998) ("*NPRM*").

INTRODUCTION AND SUMMARY

The Commission's ULS proposal was initiated under the auspices of Section 11 of the Communications Act, 47 U.S.C. § 161, which requires the Commission to determine whether any of its regulations should be eliminated as the result of increased competition. *NPRM* at ¶ 8. Consistent with Section 11, the Commission's "goal in this proceeding is . . . to establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates

redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data." *NPRM* at ¶ 8.

In Section I of these comments, BellSouth addresses issues raised by the text of the *NPRM*. In Section II, BellSouth addresses issues raised by the text of the proposed rule revisions contained in the Appendices to the *NPRM*. In both sections, BellSouth supports the FCC's efforts to streamline and simplify the application requirements governing the wireless industry. Properly targeted rule changes will substantially reduce regulatory burdens and improve FCC oversight of the wireless industry.

As discussed below, however, a number of the rule revisions referenced in the *NPRM* would result in additional regulation of wireless licensees. Such proposals should be rejected as being inconsistent with Section 11 and the underlying objective of the Telecommunications Act of 1996 to reduce regulation.

I. COMMENTS RESPONSIVE TO ISSUES RAISED IN THE TEXT OF THE NPRM

A. Fees

BellSouth vigorously opposes any changes that would have the effect of requiring wireless licensees to pay new or increased filing fees. The *NPRM* claims that this proceeding does not "add, delete, or modify any regulatory or filing fee" requirements, *NPRM* at ¶¶ 14 n.18, 18, but actions taken in this proceeding may nevertheless directly affect the fees applicants and licensees must pay.

In particular, this proceeding could require the filing of information on a different form from that currently used, or in a different format, thereby triggering application of a new or increased filing fee. For example, the Commission currently allows carriers to report *pro forma* transfers or

assignments via letter following consummation with no filing fee,[1] and certain minor amendments and license cancellations can similarly be filed by letter without a filing fee.[2] The Commission has proposed that these and other letter submissions be filed in the future under ULS using a form rather than a letter. If this proceeding is, in fact, fee-neutral, the *Report and Order* should not impose any new fee-associated filing requirements or otherwise require payment of a filing fee to provide information to the FCC that did not require such payment prior to implementation of ULS.

In this connection, the Commission implicitly acknowledges that filing fees will be affected by this proceeding, but attempts to defer consideration of fee issues to a later stage, stating that "[[f]ee issues will be considered by the Office of Managing Director ("OMD") in conjunction with its periodic review of such fees." *NPRM* at ¶¶ 14 n.18, 18. That review *should* be ministerial, however, at least with respect to filing fees. The FCC's statutory authority for biennial review of filing fees permits the FCC only to adjust such fees "to reflect changes in the Consumer Price Index," 47 U.S.C. § 158(b)(1), and does not authorize the Commission to institute new fees or to restructure the fee schedule in any substantive way.

Accordingly, any subsequent OMD filing fee review proceeding should at most establish a fee schedule that conforms the existing filing fee schedule (with any necessary inflation adjustments) to the new names for the filings that are currently subject to fees. The Commission lacks statutory authority to subject to filing fees any filings not currently covered by the list in 47 U.S.C. § 158(g),

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[1] *See Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, FCC 98-18, *Memorandum Opinion and Order* at ¶¶ 33-34 (Feb. 4, 1998) (*Forbearance Order*); 47 C.F.R. § 1.1102.

[2] *See, e.g.*, 47 C.F.R. §§ 1.1102, 22.105, 101.13(f), 101.31(g); *Order Clarifying Rules*, Gen. Docket No. 86-285, FCC 93-461 (Oct. 12, 1993).

and BellSouth further submits that the Commission lacks the authority to reclassify particular filings so as to subject them to higher fee categories than those currently applicable.

Thus, in *this* proceeding the Commission may not require a fee filing for a particular matter that is not currently subject to a fee, or reclassify a particular type of filing so as to subject it to a higher filing fee. In particular, a licensee action not currently requiring the filing of any application form should not become subject to a filing fee because this proceeding requires that such action be done electronically. Likewise, in OMD's periodic filing fee review proceeding, no new or increased filing fees may be imposed as an indirect consequence of this proceeding — such as requiring payment of a filing fee for submission of all FCC Forms. Such action by OMD would dramatically increase the fee filing requirements imposed on wireless licensees, contrary to the filing fee schedule established by statute. The Commission should make clear that it will not permit the imposition of a new filing requirement to trigger a fee that is not currently applicable.

With respect to annual regulatory fees, the FCC does have the authority to modify the statutory fee schedule in limited circumstances. *See* 47 U.S.C. § 159(b), (g). The annual regulatory fees, however, are not directly tied to application filings, as are the filing fees discussed above. Instead, the annual regulatory fees are designed to recover, within limits, the overall cost of administering FCC programs. If this proceeding results, as intended, in more streamlined and efficient wireless licensing, the ultimate result should be a lowering of regulatory fees associated with Wireless Telecommunications Bureau licensing and enforcement programs. BellSouth urges the Commission to make a commitment to reevaluate the ULS if subsequent regulatory fee reviews show that the WTB's costs recoverable through regulatory fees have increased instead of decreased.

B. On-Line Access — Networking and Operating System Issues

The Commission proposes to provide access to ULS, both for application filings and for public access and searching, only by dialing into the Commission's wide area network ("WAN") directly, and not via the Internet. *NPRM* at ¶ 5 & nn.2-5. A user accesses the WAN by using a PPP dialer, which establishes a TCP/IP network connection between the user's computer and the FCC's servers. *See generally NPRM* at ¶ 5 & nn. 2-5; <http://www.fcc.gov/wtb/uls>. The Commission's implementation of on-line access raises a number of significant networking and operating system issues that should be resolved promptly.

Most importantly, by using a WAN accessible only over a dial-up PPP connection, the Commission precludes access via the Internet and, in at least some cases, precludes access via a computer connected to the Internet or to certain types of local area networks ("LAN"). Many communications companies, engineering consultants, and law firms that will be involved in application preparation, review, and research employ personal computers that are connected to LANs that are, in turn, connected to the Internet. In many cases, it is important that a computer used for accessing the ULS also be networked with other computers — personnel working on applications need to exchange information via e-mail, access databases, etc. Similarly, the usefulness of the ULS will be maximized only if it can be readily accessed from the desktops of engineers, attorneys, researchers, and regulatory managers for research purposes. These computers are often connected to the Internet, however, which may, in some cases, render them incompatible with the FCC's WAN-only method of providing access to the ULS. It appears that a computer with a TCP/IP connection to the Internet is unable to access the FCC's WAN, requiring the computer user to employ another computer for FCC access, reboot with a new configuration each time it is necessary to switch back

and forth between the FCC WAN, the LAN, and the Internet,[3] or utilize an operating system that permits switching back and forth between the two without rebooting.

BellSouth urges the Commission to maximize the benefits of ULS by permitting, as an alternative, encrypted connection to the ULS through the Internet via a secure server. This will allow any Internet-connected computer to be used for ULS research or for application entry, without the inconvenience of rebooting and without losing the benefits of Internet e-mail and networked operation. The security of the Commission's computer network can be protected by appropriate use of firewalls and similar security devices, as has been done in connection with electronic filing of comments.[4] If the Commission nevertheless concludes that, in the short term, the security risks concerning application entry are too great to permit Internet access, it should permit read-only database access and searching via the Internet.

BellSouth also urges the Commission to make its ULS WAN more universally accessible by providing information on how to access it on a dial-up basis from a wider variety of operating systems. Currently, the web page provides access instructions only for two Microsoft operating systems, Windows 3.1 and Windows 95. From the information in those instructions, however, it does not appear that the WAN is limited to connecting through those specific operating systems. While those systems account for the majority of newer personal computers, there are nevertheless other operating systems widely in use on computer systems that are capable of establishing a TCP/IP

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[3] According to the Commission's web pages providing instructions on how to connect to the WAN, computers operating under Windows 3.1 must utilize a special FCC-specific winsock.dll file to establish the dial-up connection, and no other winsock.dll files may be used at the same time. As a result, the computer may be connected *either* to the WAN or to the FCC WAN, but not both. Moreover, switching back and forth on the same computer would require the user to rename files or change configuration information, then reboot. *See* <http://www.fcc.gov/wtb/uls>.

[4] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, *Report and Order*, FCC 98-56, 1998 FCC LEXIS 1585 (Apr. 6, 1998), __ F.C.C.R. ____ (1998).

connection via PPP and using a Netscape-equivalent browser, such as Unix/Linux, Macintosh, OS/2, Windows NT, Windows 98, Solaris, and others. By providing a set of generic connection criteria, the Commission can avoid steering its users to particular operating systems.

C. Maps

According to the Commission, "ULS will . . . permit the electronic filing of data required to create maps of proposed and existing service areas." *NPRM* at ¶ 5 n.3. BellSouth submits that if ULS is capable of both receiving the data necessary for generating maps and actually generating maps, wireless licensees should not be required to submit maps with applications. Given the Commission's desire to move to a paperless system for receiving information, eliminating paper map requirements is consistent with this goal. Accordingly, the Commission should revise Sections 22.929(c), 22.953(a)(5)(i), and 22.953(b) to eliminate the requirement that cellular applicants submit maps.[5] The only time maps should be permitted is when the applicant is relying on an alternative method for calculating propagation and the ULS does not generate a map consistent with the alternative propagation proposal. In such cases, the Commission should also ensure that ULS-generated maps ultimately conform to the paper maps submitted, and not base the ULS-generated maps on application of standard propagation techniques to the technical data contained in the application.

D. Acceptability of Paper Applications

BellSouth generally supports the Commission's effort to move to a paperless information collection platform, but cautions against moving too quickly. *See NPRM* at ¶¶ 3-5, 10, 14. The

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[5] The Commission should clarify, however, how the ULS will generate maps when a cellular licensee/applicant's CGSA is based, at least in part, on an alternative CGSA determination.

Commission should adopt a lengthy transition period for the ULS.[6] Until wireless licensees have had an opportunity to experiment with ULS, it is impossible to determine whether the ULS, as currently designed, contemplates all wireless application scenarios. Absent a lengthy transition period, wireless licensees may be faced with a situation where they want to request Commission action but the ULS rejects the request. For example, if a licensee submits an application that exceeds certain power limits, but requests a waiver, will the ULS reject the application? Similarly, will the ULS permit a licensee to notify the Commission that it has *partially* consummated a transaction? Until wireless licensees have been able to test the ULS system for a substantial period, paper applications should remain an acceptable method for seeking FCC approval.

A lengthy transition period also is necessary to determine whether the FCC will require applicants to supply certain data that is not easily provided electronically. For example, applications seeking FCC approval on environmental grounds must be accompanied by a building permit. Does the FCC intend to require all wireless licensees to scan such documents so that they may be provided electronically, will the Commission merely accept a certification that the building permit has been obtained, or will the Commission permit the building permit to be submitted as a paper supplement? Similarly, how will a wireless licensee provide evidence of frequency coordination? Although the FCC should resolve these questions as part of this proceeding, similar questions are sure to arise once ULS is implemented. A transition period is needed to resolve these types of issues before licensees are prohibited from making paper filings.

After the transition period, wireless licensees/applicants should still be permitted to file manually in limited circumstances. First, wireless licensees should be permitted to file manually

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[6] The Commission should continue to permit manual filing (*i.e.*, paper applications) during this transition period.

when it appears that the ULS system was not designed to handle the filing (*i.e.*, notifications of partial consummation, certain waivers) or if the ULS is inoperable for any reason. If an application is not accepted by the ULS system, the applicant should have the option of filing the application manually.

Second, wireless licensees should be entitled to manually file any applications or notifications containing confidential information. Even if the Commission adopts safeguards governing confidential information submitted electronically (*NPRM* at ¶ 54), carriers still may not wish to provide sensitive information electronically. Carriers may have legitimate concerns that it will be possible to gain unauthorized access to the FCC's database and obtain confidential information. Even with safeguards in place, electronic data is more accessible than paper filings. A related issue is further addressed in the following section.

Finally, the Commission should issue sample, completed ULS applications for each of the wireless services — including examples of the submission of nonstandard information. Such samples would be helpful in facilitating the transition to ULS and eliminating the return of applications for failure to enter required information in the ULS system.

E. Security of Nonpublic Information

BellSouth is concerned about the security of nonpublic information entered into the ULS. This includes confidential information submitted in applications that the applicant has requested be withheld from public inspection, but more importantly, information in *draft* applications. Applicants and licensees are entitled to keep all draft information confidential. Information in applications not formally *filed* with the Commission remains the proprietary, nonpublic property of the applicant. Public disclosure of such information, even inadvertently, could have serious competitive consequences for the company involved and could also facilitate securities law violations. This is

particularly true in the case of draft transfer and assignment applications, which are often prepared and revised in connection with confidential merger and acquisition activities that are highly confidential until publicly disclosed. BellSouth opposes implementation of ULS to the extent draft applications are saved or otherwise captured on the ULS database in a form that could even inadvertently be accessed by the FCC or members of the public. This includes access through Freedom of Information Act ("FOIA") requests.

It would appear that the only way to ensure that draft application materials stored in the ULS can be adequately safeguarded from access and disclosure would be to ensure that such materials are stored only in a highly-secure encrypted form — *i.e.,* encrypted with a 128-bit or higher key using a documented encryption technology without any "backdoors." This would ensure that the data so encrypted is not considered to be in the FCC's possession, for purposes of FOIA, as well as preventing access to the confidential data, either inadvertently or deliberately (*e.g.,* by stock manipulators, competitors, or dedicated hackers). Moreover, all sessions for the transmission of draft application data to and from the FCC's computers should be in secure 128-bit encrypted mode.

As an alternative, the Commission may wish to develop software (or provide specifications for private development of such software) for the drafting of applications in ULS form offline, stored on the user's own computer, while accessing the ULS database for access to previously-filed data. This would ensure complete privacy for draft applications, subject to appropriate security measures at the user's end. It would, however, have the disadvantage of not allowing multiple users involved in preparation of the application to access the data from different locations (*e.g.,* licensee in-house

personnel, attorneys, and engineers). Accordingly, the development of a highly secure, encrypted on-line application drafting systems would appear to be a better alternative.[7]

F. Major Modifications

The Commission proposes to deem the following changes major for all wireless radio services:

- Any substantial change in ownership or control;
- Any addition or change in frequency, excluding removing a frequency;
- Any request for partitioning or disaggregation;
- Any modification or amendment requiring an environmental assessment; and
- Any modification or amendment requiring notification to the FAA.

NPRM at ¶ 38. As discussed below, BellSouth opposes two aspects of this proposal.

1. An Addition or Change in Frequency by a Wireless Licensee Authorized to Operate Over a Block of Spectrum Should Not Be Deemed "Major"

The Commission should not require carriers awarded licenses to operate on blocks of spectrum over wide geographic areas to notify the Commission each time they change from one frequency in their block to another frequency located in the same block. *NPRM* at ¶ 38. Under the Commission's proposal, for example, it would be a major action for a cellular licensee to change from one of its 312 authorized transmit frequencies to another authorized frequency at a cell site surrounded by numerous other cell sites operated by the same licensee on the same block of frequencies. Such a proposal is administratively burdensome and serves no useful purpose. Instead,

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[7] The Commission should use a similar approach for all electronic filing, such as the FCC Form 854 filing process.

the Commission should require submission only of the relevant frequency block data, which will ordinarily remain unchanged, unless the frequency block is disaggregated.

The Commission once had a similar Part 22 requirement that required cellular licensees to notify the Commission when changing frequencies. *See* 47 C.F.R. § 22.9(d)(7)(i) (1994). FCC staff recognized that such a requirement was unworkable because frequencies were constantly being changed within cellular systems. Accordingly, the staff only required cellular licensees to "periodically" update their frequencies. The requirement that the FCC be notified of frequency changes within cellular systems was finally eliminated in CC Docket No. 92-115.[8] The FCC has proffered no rationale for reimposing this requirement on cellular or other geographic area wireless licensees. BellSouth assumes that this was inadvertent, and the Commission should so clarify.

Moreover, many cellular and PCS systems change frequencies dynamically. The switches in these systems automatically change frequencies at sites based on usage and other factors. Some PCS licensees, for example, employ "frequency hopping" to "average out" propagation and interference effects, which impact different frequencies in different ways. Frequencies at a site employing frequency hopping change more than 200 times per second. If the Commission adopts its proposal to require all wireless licensees to obtain approval prior to changing frequencies, these capabilities would have to be disabled, to the detriment of consumers. Cellular and PCS licensees would have to prepare applications and wait for the applications to be granted following a thirty-day public notice period before changing from one authorized frequency to another. This would not only impose intolerable burdens on such licensees and eliminate the flexibility that block licensing was intended to provide, it also has the potential of dramatically increasing the cost of operating the

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[8] *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, *Report and Order*, 9 F.C.C.R. 6513 (1994).

systems by imposing high application fees for "major" modifications that are currently not even reportable events.

BellSouth recognizes the need to coordinate frequency use among PCS operators, and industry groups[9] have developed methods for inter-PCS frequency coordination. The Commission should encourage the application and continued refinement of these procedures by incorporating a requirement for PCS operators using the same frequency block in adjacent markets, or different frequency blocks within the same market, to coordinate frequency use based upon industry guidelines as formulated by, for example, the National Spectrum Managers Association and the Telecommunications Industry Association. The adherence to industry guidelines will reduce the FCC filing burden, while requiring the exchange of information between PCS operators when needed for proper frequency coordination.

Accordingly, the proposal to require carriers to notify the Commission each time they change a frequency within their block should be rejected. As an alternative the Commission should require PCS operators to follow current industry guidelines.

2. Modifications to Wide Area Systems Should Not Be Deemed Major Merely Because They Require Notification to the Federal Aviation Administration

The Commission also should not adopt its proposal to deem major any proposal that requires notification to the Federal Aviation Administration ("FAA"). *NPRM* at ¶ 38. Under this proposal, a cellular or PCS licensee that "modifies" its system by adding a cell site that requires FAA notification would be required to file a Form 601 application and wait for grant of the application before commencing construction. Currently, the addition of sites internal to cellular or PCS market

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[9] These industry groups include the Telecommunications Industry Association TR 46.2 and National Spectrum Managers Association Working Group 20.

boundaries is not deemed a major action requiring FCC approval. Public notice is not required for such proposals. If FAA notification is required, cellular and PCS licensees must only file an FCC Form 854. *See* 47 C.F.R. § 17.4; *see also* 47 C.F.R. §§ 22.143, 24.55. There is no apparent justification for imposing a new filing requirement — FCC Form 601 — on these licensees; such a filing requirement is duplicative of the Form 854 filing requirement. As with frequency changes, this filing requirement would eliminate flexibility, impose substantial burdens, and potentially increase filing fees, all without any justification.

G. Minor Modifications

BellSouth supports the Commission's proposal to combine the two categories of minor filings contained in Part 101. *NPRM* at ¶ 40. Currently, the minor modification rules contained in Part 101 are needlessly confusing. Section 101.59 specifies certain actions which are considered minor and which an applicant may implement after its application setting forth the minor modifications has been on public notice for twenty-one days. Section 101.61 sets forth other "minor" actions that can be implemented without public notice or prior FCC approval. BellSouth concurs with the FCC that a justification no longer exists for requiring "minor" filings to be placed on public notice before an applicant can implement the minor changes. Thus, BellSouth supports the Commission's proposal to allow Part 101 microwave licensees to implement minor changes immediately — without requiring public notice or FCC approval.

H. Ownership Information

BellSouth generally supports the Commission's proposal to adopt a single ownership disclosure requirement for all wireless services. *NPRM* at ¶¶ 43-48. This proposal will eliminate inconsistencies between the ownership disclosure requirements set forth in service-specific rules. *NPRM* at ¶ 46. BellSouth also agrees with the Commission's tentative conclusion that a licensee

should be entitled to submit a single ownership form for all of its licenses. *Id.* A few minor changes and clarifications should be made to the Commission's proposal, however, to eliminate unnecessary information and ensure that reporting requirements are reduced substantially.

First, the Commission should clarify that the new rules will not require a corporate licensee to update its Form 602 each time the composition of its officers and directors changes. Such a requirement would impose "an extraordinary burden on large, publicly held corporations"[10] as well as unnecessarily burdening startup companies that may change their officer and director lineups frequently. Corporate licensees should only be required to report changes in officers and directors on an annual basis. Thus, a licensee should not be required to verify its officer and director information each time it files an application. The licensee should be entitled to cross-reference its Form 602, provided the officer and director information contained therein is less than one year old and no other changes have occurred that would trigger filing a revised Form 602.

Second, the Commission should only require licensees to disclose affiliates and subsidiaries that are engaged in auctionable services. The Commission has indicated that it is unsure whether information relating to carriers engaged in non-auctionable services is valuable. *NPRM* at ¶ 48. Information regarding affiliates and subsidiaries that are not engaged in auctionable services is not used by the Commission. Accordingly, absent a specific need for such information, carriers should not be required to provide information regarding affiliates and subsidiaries that are not engaged in auctionable services. Should the Commission need such information in a particular instance, it can request that a licensee provide the information.

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[10] *Sections 21.11(a) and 22.11(a) of the Rules to Abolish the Annual Filing of FCC Form 430*, CC Docket No. 82-37, *Report and Order*, FCC 83-547, ¶ 4 (Dec. 20, 1983).

I. Frequency Coordination

The Commission proposes to amend Section 101.103 to require frequency coordination only for applicants filing amendments and modifications that would be classified as major. *NPRM* at ¶ 50. Although BellSouth generally supports this concept, the proposed revisions to Section 101.103 are not contained in the appendix to the *NPRM*. The Commission should issue an erratum setting forth the proposed revisions to Section 101.103 prior to the conclusion of the reply cycle in this proceeding to afford parties an opportunity to comment on the proposed rule change.

J. Microwave Applicants Should Not Be Required to Certify that They Have Completed Construction

Less than two years ago, the Commission eliminated the need for microwave licensees to file an FCC Form 494A certifying completion of construction.[11] The Commission determined that the form, which was created as a means to inform the Commission and others that a microwave station is operational and had not been abandoned, served no useful purpose.[12] The Commission now proposes to resurrect this certification requirement, but provides no justification for its reimposition. *NPRM* at ¶ 62. Given the deregulatory nature of this proceeding, and the Telecommunications Act of 1996 more generally, the Commission should reject this proposal.

The Commission also proposes to require Part 101 microwave licensees to file a further modification application if they fail to construct a modification previously granted by the Commission. *NPRM* at ¶ 62. The purpose of this further modification application is to notify the

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[11] *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101*, WT Docket No. 94-148, *Report and Order*, 11 F.C.C.R. 13449, 13458 (1996) ("*Part 101 Order*").

[12] *Part 101 Order*, 11 F.C.C.R. at 13458; *Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services*, CC Docket No. 93-2, *Notice of Proposed Rulemaking*, 8 F.C.C.R. 1112, 1115 (1993).

Commission that the license should be returned to its pre-grant status. If the Commission decides to require Part 101 microwave licensees to certify completion of construction, there is no reason to adopt this proposal and the database should not be modified until a certification of completion of construction is filed.

K. Consummation of Assignments and Transfers of Control

The Commission proposes to adopt "uniform" transfer and assignment rules for all wireless services. Under these rules, all wireless licensees will be required to notify the Commission once an approved transaction has been consummated. *NPRM* at ¶¶ 66-67. The proposed rule reads in relevant part:

> In all Wireless Radio Services, licensees are required to notify the Commission of consummation of an approved transfer or assignment. . . . For transfers and assignments that require prior Commission approval, the transaction must be consummated and notice provided to the Commission within 60 days of public notice of approval, unless a request for an extension of time to consummate is filed prior to the expiration of this 60-day period. For transfers and assignments that do not require prior Commission approval, notice of completion of the transaction must be provided within 30 days of completion . . . .

See proposed rule 47 C.F.R. § 1.948(c). This proposal should be rejected. No consummation deadline or notification requirement should be established for transfers and assignments.[13]

The Commission's proposal reinstates consummation deadlines and notification requirements that were eliminated for the microwave service nearly two years ago. At the time these requirements were eliminated, the Commission noted:

> Eliminating the period for consummation of assignments or transfers should satisfy the concerns of the commenters and avoid the numer-

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[13] A consummation notice would, of course, be required where no Commission authorization was required for a *pro forma* assignment or transfer, pursuant to the Commission's forbearance policy.

> ous extension requests filed with the Commission each year. We believe that conforming common carrier consummation procedures with private operational fixed service procedures will reduce administrative burdens and carrier costs. We see no public benefit in extending the period to 60 days or more, as such a measure would not avoid processing burdens, and would invite requests for extensions of time as does the existing 45 day period. Consistent with eliminating the consummation period, we eliminate the requirement for common carriers to notify the Commission within 10 days of consummation. Given that applicants will have no time constraints to complete these transactions, we will presume that a consummation of an assignment or transfer will occur and the Commission's database will be updated to reflect the consummation when the application is granted. To avoid database inaccuracies and to alleviate commenters' concerns, we will require both common carrier and private operational fixed service licensees who fail to consummate, to modify their licenses accordingly within 30 days of a failure to consummate.

Part 101 Order, 11 F.C.C.R. at 13456.

Rather than reimpose these requirements on Part 101 microwave licensees, the Commission should eliminate the consummation deadlines and notification requirement for all wireless services.[14] The only rationale provided by the Commission for reimposing these requirements is that:

> problems occur when an assignment application or transfer approved by the Commission is entered into the licensing database . . . and is not subsequently consummated. In the absence of a notification procedure, no efficient mechanism exists for correcting the database under these circumstances. Instead, we have generally required the filing of a second transfer application that reflects the "return" of the license from the putative licensee to the original licensee.

NPRM at ¶ 66. BellSouth submits that the filing of a second transfer application in the isolated instances where a transaction is not consummated *is* a more efficient mechanism than requiring carriers to submit notifications for every transaction during specified windows of time. The

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[14] At a minimum, the Commission should not adopt the proposed bifurcated consummation notice requirement. The purpose of ULS was to simplify and streamline FCC rules, which is inconsistent with a bifurcated transfer and assignment rule.

Commission has already recognized that establishing time frames for consummation simply results in the filing of numerous extension requests that needlessly waste resources. *Part 101 Order*, 11 F.C.C.R. at 13456.

L. The Commission Should Convert To NAD83

BellSouth supports the Commission's proposal to require that 1983 North American Datum ("NAD83") be used to provide coordinate data for sites located in the continental United States. *NPRM* at ¶ 70. The FAA has been requiring the submission of coordinate data in NAD83 since 1992. Thus, for the past six years, wireless licensees were required to supply site coordinate data in two different forms. This often resulted in incorrect data being supplied to either the FCC or the FAA. The FCC's proposal should eliminate this problem.

BellSouth opposes any proposal, however, that would require FCC licensees to convert all of the information for existing sites to NAD83 or that would require FCC licensees to verify (by a date certain) that the coordinate data has been converted correctly. FCC licensees should merely be required to provide updated site information on a going-forward basis. FCC licensees have already supplied site data for virtually all sites as part of the Commission's tower registration procedures.[15] The FCC has a program capable of converting all existing coordinate data to NAD83 and FCC licensees should not be required to undertake another massive review of site data.

M. Environmental Issues

The Commission proposes to require technical information whenever an Environmental Assessment is needed. *NPRM* at ¶ 78. Similarly, the Commission is incorporating environmental issues into its ULS forms and rules. *See* proposed rule 47 C.F.R. § 1.923(e). Over the past few years, however, industry representatives have been informally requesting that the Commission

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[15] *See* 47 C.F.R. § 17.4.

streamline its environmental rules — especially those involving floodplains. This proceeding, which was initiated to "streamline our wireless licensing rules by eliminating regulations that are duplicative, outmoded, or otherwise unnecessary," provides the perfect opportunity for the Commission to eliminate unnecessary regulation of wireless sites that will be located in floodplains. *NPRM* at ¶ 1.

The National Environmental Policy Act of 1969 ("NEPA") was enacted to require all Federal agencies, including the FCC, to "build into their decision making process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed action in order that adverse environmental effects may be avoided or minimized."[16] The Council of Environmental Quality ("CEQ") was created to assist federal agencies in developing procedures and guidelines to implement NEPA.[17] According to CEQ, agencies are only required to analyze actions that would have a "significant" environmental impact. 40 C.F.R. § 1500.6.

Based on NEPA and the CEQ guidelines, the FCC adopted rules which identified "major" actions likely to have a significant environmental effect.[18] The FCC indicated that it would require applicants to submit environmental information only for these major actions.[19] A proposal to locate a communications facility in a floodplain was not initially deemed a major action.[20] In 1977,

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16 *See* 42 U.S.C. § 4321 et seq.; 40 C.F.R. § 1500.1.

17 40 C.F.R. § 1500 et seq.

18 *See Implementation of the National Environmental Policy Act of 1969*, Docket No. 19555, *Report and Order*, 49 F.C.C.2d 1313, 1319 (1974); 47 C.F.R. § 1.1305 (1975). The Commission acknowledged that it was permissible to consider "the number of applications for which routine environmental processing would be useful and productive, it being apparent that processing in every instance would be neither possible nor productive, so diluting staff attention as to produce no useful results." 49 F.C.C.2d at 1319.

19 *Id.*

20 *See Implementation of the National Environmental Policy Act of 1969*, Docket No. 19555, *Report and Order*, 49 F.C.C.2d 1313, 1317-20 (1974); 47 C.F.R. § 1.1305 (1975).

however, the President issued an *Executive Order* calling upon Federal agencies to avoid adverse impacts associated with the occupancy and/or modification of floodplains,[21] leading the Commission to revise its rules to include the locating of a facility in a floodplain as a major action.[22]

The *Executive Order* sought to preserve the beneficial values served by floodplains by minimizing the impact of floods on human safety and reducing the risk of flood loss.[23] Accordingly, it directed agencies to "include *adequate provision* for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses [and] permits . . . they administer."[24] To carry out this responsibility, agencies were instructed to determine whether a proposed action will occur in a floodplain and, if so, to ensure alternatives were considered or action was taken to minimize potential harm to or within the floodplain.[25]

The Water Resources Council ("WRC") issued guidelines for implementing the *Executive Order* to assist federal agencies in preparation of their regulations.[26] It defined the floodplains of concern as "areas subject to inundation by a flood with a one percent chance of occurring in any year (*i.e.*, '100-year or base flood')."[27] The WRC emphasized two points about the establishment of agency procedures governing floodplains:

> First, ... [a]gencies are required to use all *practicable* means and measures to minimize harm. The Order does not expect agencies to employ unworkable means to meet this goal. Second, agency

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21 E.O. 11988, 42 Fed. Reg. 26,951 (1977) ("*Executive Order*").

22 *See Amendment of Section 1.1305, Rules and Regulations, Order*, 66 F.C.C.2d 912 (1977).

23 *Executive Order*, 42 Fed. Reg. at 26,951.

24 *Executive Order*, 42 Fed. Reg. at 26,953 (emphasis added).

25 *Executive Order*, 42 Fed. Reg. at 26,952-53.

26 *See Water Resources Council, Guidelines for Implementing Executive Order 11988*, 43 Fed. Reg. 6030 (1978) ("*WRC Guidelines*").

27 *WRC Guidelines*, 43 Fed. Reg. at 6030.

> procedures are intended to be consistent with the standards in the [National] Flood Insurance Program. . . .[28]

Following the release of the WRC guidelines, the FCC amended its rules to designate the mere siting of a facility in a floodplain, without taking into account other considerations, as a major action requiring both the preparation of an environmental assessment ("EA") and the receipt of FCC approval prior to construction.[29] As shown below, however, other less restrictive, more "practicable" means are available to ensure that harm to the floodplain is minimized and that the regulations include "adequate provision" for the evaluation and consideration of flood hazards.[30] Specifically, the construction of a communications facility in a floodplain should not be deemed a major action if all local approvals have been obtained and the proposed facility will be located in a community participating in the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management Agency ("FEMA").[31] Amending the rules in this manner will impose less restrictive filing requirements upon licensees[32] while ensuring that the goals of NEPA, the *Executive Order*, and the WRC guidelines — minimization of the impact of floods on human safety and reduction in the risk of flood loss — are met.

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28 *WRC Guidelines*, 43 Fed. Reg. at 6034.

29 *See Amendment of Section 1.1305, Rules and Regulations, Order*, 66 F.C.C.2d 912 (1977).

30 *See WRC Guidelines*, 43 Fed. Reg. at 6034; *Executive Order*, 42 Fed. Reg. at 26,953.

31 Section 1.1307(a)(6) states that facilities to be located in a floodplain are actions which may have a significant environmental effect, and therefore require the preparation of an EA. *See* 47 C.F.R. § 1.1307(a)(6). The amendment could take the form of a clarifying sentence or a note to the rule subsection.

32 EA filings require the expenditure of significant time and resources, which can delay a licensee's build-out and the initiation of service to the public. *See, e.g.*, 47 C.F.R. § 1.1311. General Commission processing of EA applications averages two to three months from the time of filing until a grant is received, which includes thirty days on public notice.